

4 Official Opinions of the Compliance Board 122 (2005)

**“MEETING” – SCHOOL BOARD DISCUSSION WITH
COUNTY LEGISLATIVE DELEGATION, DETERMINED TO
BE A MEETING – EXECUTIVE FUNCTION EXCLUSION –
SCHOOL SYSTEM ADMINISTRATIVE AND COMPLIANCE
MATTERS, HELD WITHIN THE EXCLUSION –
LEGISLATIVE ADVOCACY, HELD OUTSIDE THE
EXCLUSION**

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The Washington Post

The Open Meetings Compliance Board has considered your complaint alleging that the Board of Education for Prince George’s County violated the Open Meetings Act by unlawfully holding a closed meeting on December 13, 2004. For the reasons stated below, we conclude that some items of discussion at the meeting were outside the scope of the Act. As to these, there was no violation. We also conclude, however, that one portion of the meeting was subject to the Act. Consequently, the Board of Education violated the Act by holding an improperly closed meeting.

I

Complaint and Response

The complaint noted that the Board of Education issued a press release on December 7, 2004, in which it stated that the Board of Education and the Prince George’s County House Delegation intended to meet in closed session on December 13, 2004, in the offices of the Board of Education. The press release stated that the meeting’s purpose was “to discuss executive functions of the Board [and] therefore, the meeting will be closed to the public.” The complaint alleged that this closure violated the Act.

In a timely response on behalf of the Board of Education, Board Attorney Andrew W. Nussbaum described the December 13 closed as “part social and part informational” According to the agenda provided with the response, the meeting concerned four substantive items, which we list in a different sequence than on the agenda itself:

1. *Status of the Prince George's County Public Schools.* According to the response, this item consisted of a presentation by the Chief Executive Officer of the School System on a variety of topics of current interest, including academic achievement, the results of standardized testing, the status of capital improvement projects, and the implementation of the federal No Child Left Behind Act.

2. *Web survey – FY 2006 budget process.* This item involved a presentation by a board member regarding a web-based survey of parents concerning budget priorities. The response indicated that “there was no discussion about any responses or results from the web-site survey,” because these data were not yet available.

3. *Excellence in Education Foundation.* This item concerned the creation and goals of a not-for-profit fund raising organization, designed to support the County's school system. The presentation, by the Executive Director of the recently formed foundation, was, in the words of the response, “informational in nature.”

4. *2005 legislative priorities.* The response indicated that the Board of Education had previously developed a list of legislative priorities, which the Board's Vice Chair then presented as priorities for the upcoming 2005 Legislative Session. A document summarizing these legislative priorities identified five items, most of which related to the levels of State funding for school construction and operation. Two of the items involved explicit advocacy for specific items of legislation.¹ The response stated that the meeting included “no discussion about the formulation of other or further priorities.”

Having thus described what took place at the December 13 closed meeting, the response contended that the meeting was not subject to the Open Meetings Act. First, the response suggested that the December 13 gathering was not properly viewed as a “meeting” subject to the Act at all, because it “was not intended or called for the purpose of ‘the consideration or transaction of public business.’ ... Rather, it was intended as a social gathering with the members of the Prince George's County House Delegation, as well as an informational session, to provide them with information about the Prince George's County Public School System.” Alternatively, the response contended that the informational nature of the session constituted an executive function excluded from the Act. According to the response, “there were no steps taken toward policy development or policy making on the part of the Board of Education, nor were any motions made or votes taken. On every

¹ One of these involved a proposed change to existing law relating to an energy or fuel tax: “The Board of Education supports legislation to clarify the language regarding the appropriation of the revenues from the energy tax” The other specific legislative proposal called for reestablishing the program related to the rehiring of retired teachers and principals.

item on the agenda, the purpose was simply to inform and advise members of the Prince George's County House Delegation about already existing administrative policies, practices, and procedures."

II

Analysis

A. Was this a meeting?

The Open Meetings Act applies only when a public body is holding a meeting. A public body "meets" when it "convene[s] a quorum of [the] public body for the consideration or transaction of public business." §10-502(g).² There is no dispute that a quorum of the Board of Education convened on December 13, and the items on the agenda manifestly involved "public business." The response suggested, however, that there was no "consideration or transaction" of this business because of the purely informational nature of the items.

The premise of the Board of Education is incorrect. The "consideration or transaction of public business" embraces "every step of the process," not simply focused debate and decision making. *City of New Carrollton v. Rodgers*, 287 Md. 56, 72, 410 A.2d 1070 (1980). *See also, e.g., 3 Official Opinions of the Open Meetings Compliance Board* 30, 34 (2000) (Opinion 00-8).³ Obviously, members of the Board of Education would be keenly interested in the reaction of members of the House Delegation to the items discussed on December 13, and this engagement with elected officials must be reckoned as part of the "consideration or transaction" of these items of public business.

Hence, we conclude that the December 13 gathering was a meeting subject to the Act. It was not a mere social occasion.

B. Was the entire discussion an executive function excluded from the Act?

1. Three items – outside the Act.

We think it highly likely that the Chief Executive's Officer's presentation about the status of ongoing capital improvements and compliance with existing

² All statutory references are to the State Government Article, Annotated Code of Maryland.

³ For brevity's sake, we shall henceforth refer to the volumes of Compliance Board Opinions as "*OMCB Opinions*."

federal and State educational attainment policies constituted an executive function to which the Act did not apply. We are of the same opinion about the discussion of the survey of parents and the implementation of a fund raising strategy through a newly created foundation. None of these items seemingly involved any aspect of new policy development, and all can fairly be characterized as the administration or implementation of existing law and policy. Thus, we regard these three items as executive function matters to which the Act did not apply. *See, e.g. 4 OMCB Opinions* 28, at 31 (2004).⁴ There was no violation in the closing of these portions of the meeting.

2. One item – covered by the Act.

The same cannot be said, however, about the portion of the meeting in which Board of Education presented its legislative priorities for 2005. In *4 OMCB Opinions* 12 (2004), one of the issues involved a discussion by a town council concerning its support of legislation then pending before a committee of the House of Delegates. The town contended that this discussion was an executive function excluded from the Act. We rejected that argument: “For an activity to fall within the executive function exclusion from the Act, the activity must involve ‘the administration of’ existing law or policy. We do not discern how the town council’s expression of an opinion in support of a bill pending in the General Assembly is the administration of existing law.” *4 OMCB Opinions* at 17.⁵ Rather, we held that the town council’s discussion of the bill fell within none of the functions defined in the Act. “Because a topic of discussion that is not encompassed by any of the Act’s defined functions is covered by the Act, the Act applied to the town council’s ... session.” *Id.* at 18. *See 1 OMCB Opinions* 96 (Opinion 94-7) (1994).

When the Board of Education urged the House Delegation to change the law on the energy/fuel tax or reestablish through legislation a program for rehiring retirees, the Board of Education was not administering any current law. It was advocating for new law.⁶ That is not an executive function.

⁴ This opinion, as well as legions of earlier ones, may be consulted for a fuller account of the executive function exclusion.

⁵ The Act defines “executive function,” in relevant part, as “the administration of” a State or local law, rule, regulation, or bylaw. §10-502(d)(1).

⁶ We do not see advocacy of these legislative priorities as a legislative function of the Board of Education. *Cf. 4 OMCB Opinions* at 21 (local excise tax legislation).

III

Conclusion

The Open Meetings Compliance Board finds that the Board of Education for Prince George's County violated the Open Meetings Act on December 13, 2004, by closing its discussion of legislative priorities without either invoking an exception in the Act allowing a closed session or complying with the Act's procedures for closing a meeting.⁷ In other respects, the Compliance Board finds no violation with respect to the closed meeting.

OPEN MEETINGS COMPLIANCE BOARD

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⁷ We do not mean to suggest that one of the Act's exceptions might have been invoked. It was the responsibility of the Board of Education to consider this possibility at the time of the closing. If no exception could have applied, this portion of the meeting should have been open.